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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOANNES GREGORIUS BREMER,
PARASKEVAS DUNIAS,
GILLIAN ANTOINETTE MIMNAGH-KELLEHER,
ADRIANUS ROMMERS, and
WILHELMUS L.M.C. VERHOEVEN

Appeal 2009-002286
Application 10/537,878
Technology Center 2800

Decided: June 30, 2010

Before KENNETH W. HAIRSTON, JOHN C. MARTIN, and
JOSEPH F. RUGGIERO, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from the final rejection of claims 1 to 3 and 5 to 12. Claims 4 and 13 have been canceled.

We reverse.

STATEMENT OF THE CASE

The disclosed invention relates to an activity monitor and a method of monitoring activity using a plurality of motion sensors which each produce a sensor signal indicative of motion (Spec. 1:1-25, 2:7-12). To conserve battery power, monitoring and processing of the sensor signals is performed “discontinuously in time” and the processor monitors the sensor signals “in turn” (claims 1 and 9; Spec. 3:18-4:10).

Claim 1 is representative of the claimed invention, and reads as follows:

1. An activity monitor comprising:

a measurement unit including a plurality of motion sensors operable to produce respective sensor signals indicative of motion experienced thereby; and

a processor operable to receive the sensor signals from the measurement unit and to process the sensor signals in accordance with a predetermined method,

characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Choi	US 5,317,304	May 31, 1994
Depeursinge	US 6,201,476 B1	Mar. 13, 2001
Verplaetse	2003/0014660 A1	Jan. 16, 2003
		(filed Apr. 23, 2002)

(i) The Examiner rejected claims 1, 3, 5 to 7, and 9 to 11 under 35 U.S.C. § 102(b) based upon the teachings of Depeursinge.

(ii) The Examiner rejected claims 1 to 3 and 5 to 12 under 35 U.S.C. § 102(b) based upon the teachings of Choi.

(iii) The Examiner rejected claims 1 to 3 and 5 to 12 under 35 U.S.C. § 103(a) based upon the teachings of Verplaetse.

Appellants argue, *inter alia*, (App. Br. 9-16 and 18-21; Reply Br. 9-12) that the applied references to Depeursinge, Choi, and Verplaetse fail to teach or suggest operating a processor to monitor a plurality of sensor signals “in turn,” as set forth in claims 1 and 9. More specifically, Appellants argue (Reply Br. 10) that monitoring the sensor signals in turn requires that the sensor signals be monitored one after the other. Appellants contend that (i) Depeursinge teaches monitoring sensor signals concurrently using motion sensors 2a-2c and signal processor 6 and processing units 7-9 (App. Br. 9 citing col. 2, l. 34 to col. 4, l. 7); (ii) Choi teaches concurrent monitoring and processing of the sensor signals (App. Br. 13); and (iii) Verplaetse monitors and processes sensor signals concurrently and not in turn (App. Br. 18-20).

With regard to the anticipation rejections of claims 1 to 3 and 5 to 12, the Examiner relies upon Depeursinge (Ans. 3-4 citing col. 3, ll. 65-67 and col. 4, ll. 7-11) and Choi (Ans. 5 citing col. 5, ll. 3-15 and col. 6, ll. 28-61) as each disclosing the feature recited in claims 1 and 9 of operating a processor to monitor a plurality of sensor signals “in turn.” The Examiner explains that “for examination purposes, the limitation ‘in turn’ has been afforded the interpretation of being ‘one after the other’” (Ans. 9), and that Appellants’ Specification, claims, and drawings do not support Appellants’ interpretation of “in turn” as requiring sequential non-overlapping monitoring, or time-division monitoring, of the sensors (*see* Ans. 8-9). The

Examiner then contends that Appellants admit at page 7 of the Brief, in summarizing the claimed subject matter, that the feature of monitoring sensor signals in turn is met by a device that is operable in a standby mode (Ans. 9).

In view of the entire record before us, we find that the Examiner has taken Appellants' statement at page 7 (which notably is not even in the Argument section) of the Brief out of context. We do not take Appellants' statement at page 7 of the Brief as an admission by Appellants that any device that is operable in a standby mode meets the limitations recited in claims 1 and 9 of monitoring sensor signals in turn. In fact, Appellants have consistently argued throughout the prosecution history that the applied references to Depeursinge and Choi monitor sensor signals *concurrently* or at the same time, as opposed to one after the other (*see, e.g.* App. Br. 9, 13-14).

According to the Examiner, while Depeursinge and Choi are in the standby mode “no monitoring takes place” (Ans. 4, 6 (emphasis added); *also see* Final Rej. 5, 7 (emphasis added)). If the activity monitoring device, and thus the sensors, are in a standby mode, then no monitoring is taking place such that battery power is saved.

Depeursinge and Choi are silent with respect to how or in what order the sensor signals are being monitored. Appellants' contentions that Depeursinge and Choi monitor sensor signals concurrently are reasonable. The Examiner has neither shown, nor even alleged, that Depeursinge and Choi monitor the sensor signals one after the other. Instead, the Examiner's entire position relies upon Appellants' supposed admission which, as discussed *supra*, has been taken out of context. Therefore, we find that the

standby modes disclosed by Depeursinge and Choi do not teach the “in turn” limitations found in the claims on appeal.

In view of the foregoing, and with respect to the activity monitor and method of monitoring activity recited in independent claims 1 and 9, we find that Depeursinge and Choi fail to teach the limitation common to each of these claims of operating a processor to monitor a plurality of sensor signals “in turn.” It follows that the Examiner has not established anticipation because neither Depeursinge nor Choi discloses each and every limitation of the claimed invention set forth in independent claims 1 and 9, or the invention set forth in claims 2, 3, 5 to 8, and 10 to 12, which depend respectively therefrom. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

The Examiner has also failed to establish a prima facie case of obviousness of the claimed subject matter set forth in claims 1 to 3 and 5 to 12 since Verplaetse (*see* ¶¶ [0036] and [0045] relied upon by the Examiner (Ans. 7) as teaching monitoring sensor signals “in turn”) describes a low-power mode or sleep mode which fails to teach or suggest monitoring the signals in turn for the same reasons set forth above. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

The anticipation rejections of claims 1 to 3 and 5 to 12 are not sustained, because Depeursinge and Choi do not teach operating a processor to monitor a plurality of sensor signals “in turn.” The obviousness rejection of claims 1 to 3 and 5 to 12 Verplaetse is not sustained, because the Examiner’s articulated reasoning concerning the teachings of Verplaetse

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does not support a legal conclusion of obviousness (*KSR Int'l, v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007)).

CONCLUSIONS

The Examiner erred in rejecting claims 1 to 3 and 5 to 12 under 35 U.S.C. §102(b).

The Examiner erred in rejecting claims 1 to 3 and 5 to 12 under 35 U.S.C. §103(a).

ORDER

The Examiner's decision rejecting claims 1 to 3 and 5 to 12 is reversed.

REVERSED

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P. O. BOX 3001
BRIARCLIFF MANOR, NY 10510